

Letters of Findings Number: 01-20130478P
Tax Administration
For the Period 2012

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ISSUE

I. Tax Administration—Penalty.

Authority: IC § 6-3-4-4.1; IC § 6-8.1-5-1; IC § 6-8.1-10-2.1; Lafayette Square Amoco, Inc. v. Indiana Dep't of Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Indiana Dep't. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Horseman v. Keller, 841 N.E.2d 164 (Ind. 2006); Wendt LLP v. Indiana Dept. of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); [45 IAC 15-11-2](#).

Taxpayers protest the imposition of a penalty for failure to make estimated tax payments.

STATEMENT OF FACTS

Taxpayers filed a joint tax return for the year 2012. Taxpayers were assessed a penalty by the Indiana Department of Revenue ("Department") for failure to pay estimated quarterly taxes in 2012. The husband filed a protest (therefore, this Letter of Findings will only refer to "Taxpayer" hereinafter). A telephone hearing was held. Additional facts will be supplied as necessary.

I. Tax Administration—Penalty.

DISCUSSION

At the outset, the Department notes that the notice of proposed assessment is prima facie evidence that the Department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); Indiana Dep't. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012).

The Department imposed a penalty under IC § 6-3-4-4.1, which states in relevant portion:

(b) Every individual who has adjusted gross income subject to the tax imposed by this article and from which tax is not withheld under the requirements of section 8 of this chapter shall make a declaration of estimated tax for the taxable year. However, no such declaration shall be required if the estimated tax can reasonably be expected to be less than one thousand dollars (\$1,000). In the case of an underpayment of the estimated tax as provided in Section 6654 of the Internal Revenue Code, there shall be added to the tax a penalty in an amount prescribed by [IC 6-8.1-10-2.1\(b\)](#). (Emphasis added).

The statute references to IC § 6-8.1-10-2.1(b), which states:

(b) Except as provided in subsection (g), the penalty described in subsection (a) is ten percent (10[percent]) of:

- (1) the full amount of the tax due if the person failed to file the return;
- (2) the amount of the tax not paid, if the person filed the return but failed to pay the full amount of the tax shown on the return;
- (3) the amount of the tax held in trust that is not timely remitted;
- (4) the amount of deficiency as finally determined by the department; or
- (5) the amount of tax due if a person failed to make payment by electronic funds transfer, overnight courier, or personal delivery by the due date.

Taxpayer states that he has "never owed federal tax, and therefore have not needed to withhold funds."

Taxpayer provided the Department with a copy of his 2012 federal tax return, which shows at line 37 that Taxpayer had adjusted gross income. That line from Form 1040 states:

37 Subtract line 36 from line 22. This is your **adjusted gross income**

Taxpayer also had Indiana adjusted gross income for 2012 and owed over \$1,000 in Indiana income tax for 2012. Thus Taxpayer came within the requirements of IC § 6-3-4-4.1.

Taxpayer stated in his protest letter that he is "self-employed and do not have any idea from month to month what my income will be or even if I will have any income at all." However, Indiana has a schedule that addresses this issue—Schedule IT-2210A. The IT-40 Booklet for 2012 states:

Schedule IT-2210A should be used by individuals who receive income (not subject to withholding tax) unevenly during the year. This schedule will help determine whether a penalty is due, or whether an exception to the penalty has been met.

The Department also refers to [45 IAC 15-11-2\(b\)](#), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a

taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(Emphasis added.)

Taxpayer states in his protest letter:

To fine me for not having withheld the money is an attempt to force withholdings. Withholdings forcibly and unconstitutionally deprive a person of his wealth without cause. The State is demanding the surrender of money fifteen and a half months prior to its due date. Constitutionally, I am to be secure in my person, my papers, and my possessions, yet the State is treating my possessions as its own by demanding, without a warrant, the right to seize funds beginning January of one year that are not due them until mid-April of the following year.

Taxpayer is asserting that IC § 6-3-4-4.1 is unconstitutional. The Department does not believe that a tax administrative hearing is the proper venue to make a constitutional challenge to an Indiana statute. The Department also notes that the Indiana Supreme Court has stated that Indiana legislation is presumed to be constitutional. *Horseman v. Keller*, 841 N.E.2d 164, 170 (Ind. 2006). And finally, the Department notes that Taxpayer did not develop his argument. (See *Wendt LLP v. Indiana Dept. of State Revenue*, 977 N.E.2d 480, 485 n.9 (Ind. Tax Ct. 2012) (stating in a footnote parenthetical "that poorly developed and non-cogent arguments are subject to waiver" by the Indiana Tax Court) (citing *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010))). Taxpayer has not met his burden of proof regarding his protest; Taxpayer's protest is denied.

FINDING

Taxpayer's protest is respectfully denied.

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